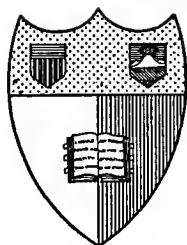


HE 2757
1916
K12

57

H

12



**New York
State College of Agriculture
At Cornell University
Ithaca, N. Y.**

Library

Cornell University Library
HE 2757 1916.K12

The government and the railroads.



3 1924 013 693 118

mann

the Compliments of
OTTO H. KAHN

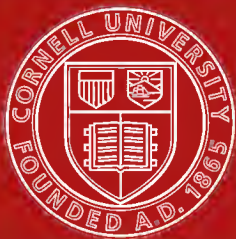
THE GOVERNMENT
AND
THE RAILROADS

BY
OTTO H. KAHN

(Reprinted from The "World's Work" February, 1916.)

HERZD
KIZ
AE.

@ 3/5 G1



Cornell University
Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

<http://www.archive.org/details/cu31924013693118>

THE GOVERNMENT AND THE RAILROADS

BY

OTTO H. KAHN

The conflicts and the storms which have raged around the railroads these many years have largely subsided. Abuses which were found to exist, though it is fair to say that for their existence the railroads were by no means alone to blame, have been remedied and their recurrence made impossible. The people's anger has cooled and, though some politicians still sound the old war-cry, many indications (such, for instance, as the recent popular vote against the Full Crew Law in Missouri) tend to show that the people desire to have the railroads fairly and justly dealt with, exacting and expecting from them a reciprocal attitude, treatment, and spirit. Railroad executives have come to recognize their functions as those of semi-public officers owing accountability no less to the public than to the shareholders of the particular property they represent. A system has been evolved which, while preserving for the country in the conduct of its railroads the inestimable advantage of private initiative, efficiency, resourcefulness, and responsibility, yet through governmental regulation and supervision emphasizes and protects the community's rights and guards against those evils and excesses of unrestrained individualism which experience has indicated. It is in every way a far better system than government ownership of railroads, which, wherever tested, has proved its inferiority, except only in Germany, and the very reasons which have made government ownership measurably successful in Germany are the reasons which in America would make it nothing short of an economic calamity,

being given political and other circumstances as they now exist and are likely to continue to exist for a long time to come.

The system as it has evolved itself in America, though it is resented by some of the Bourbons as far too advanced and as an indefensible interference with the rights of property, and by some of the Ultra-Radicals as not going far enough, seems to me in theory an almost ideal one. But the best of theories is futile if its practical application is at fault; and I know of few more flagrant instances of the unwise and unsound application of a wise and sound theory than in the case of our railroad legislation. Indeed, the structure of federal and state laws under which American railroads are compelled to carry on their business at present is little short of a legislative monstrosity. Writing on the subject of control and regulation of corporations, Colonel Roosevelt in a recently published article expresses himself as follows:

. . . When we control business in the public interest we are also bound to encourage it in the public interest, or it will be a bad thing for everybody and worst of all for those on whose behalf the control is nominally exercised. . . .

This object cannot be accomplished by a chaos of forty-eight states working at cross-purposes in the development of our interstate and international industrial fabric. . . .

So much of the regulation attempted in our country in the past has been done by demagogues or by heedless politicians interested only in their own momentary political success that the very name Regulation has become an offense and an abomination to many honest business men.

THE ANTI-RAILROAD ERA.

With the enactment of the Hepburn Bill, during President Roosevelt's second administration, began the modern era of railroad regulation and rate control by commissions. It was a measure of radical innovation and far-reaching importance, and it ought to have been given a fair test in practical operation for a sufficient length of time. Instead, President Taft, in 1909, felt called upon to propose a new and drastic measure of railroad legislation. He embodied his recommendations on the subject in a bill which was duly introduced in Congress. It was far from being a perfect piece of legislation. The odor of politics was not absent from it. It was considered by the railroads, and in business circles generally, as uncalled for, unwise, and as unduly burdensome and restrictive in various important respects. But at least it was a consistent and carefully matured measure. It was the formal and official expression of the views of the Taft Administration, the second important measure put forward by it. It offered the first real test of the capacity for leadership and fighting edge of the President and his Cabinet, and they failed in it lamentably.

The introduction of the Taft railroad bill coincided with a stage of public sentiment where suspicion, ill-will, and resentment against corporations were rampant, where inflammatory appeal took the place of reasoning, where economic heresies and fallacies hoary with age, tried and found wanting and discarded elsewhere long ago, were rediscovered by our brand of demagogues and proclaimed by them as a cure-all, partly honestly, from lack of thorough

study and clear thinking, partly disingenuously, for political and personal advantage.

It was a right instinct which had guided the people, under President Roosevelt's leadership, to determine, firmly and unmistakably, that the time had come to regard the pioneer period of this country's industrial and economic development as at an end, to revoke the latitude which had been tacitly accorded, to insist on strict adherence to the rules of business conduct laid down by the law, and to punish any violation of such rules, by whomsoever committed, high or low. It was right to have recourse to the law to undo some of the things which those charged with the administration of the law had through its non-enforcement permitted and even sanctioned. It was entirely right and beneficial to set up and proclaim a new standard of business methods in certain respects because business had exercised great, and in some ways excessive, power for a long time, and all power tends to breed abuses and requires limitations and restraints. It was salutary and timely to bring home to corporations and individuals, however powerful, the respect and fear due to the law and to use all means at the Government's disposal to visit upon dishonorable practices condign punishment. But it was unreasonable and unfair to judge with retroactive moral severity in the light and according to the measure of that new standard business methods which with universal knowledge and universal tolerance had prevailed in the past; to stigmatize, as heinous, certain practices which did not in their essence involve any moral turpitude, certain acts which became unlawful, not because they were inherently immoral or dishonorable, but only because and only from the moment

when Congress by statute declared them unlawful, and which, too, are not only not forbidden, but are expressly sanctioned by the laws and practices of other great commercial nations such as England, France, and Germany.

It was hardly just to make no allowance for the fact that the people themselves and their chosen representatives cannot, in fairness, be entirely absolved from responsibility for the regrettable excesses and excrescences which, together with much splendid and fruitful achievement, were engendered by the period of vast and unparalleled national development from the close of the Civil War to the first years of the present century, as similar economic pioneer periods in all countries and at all times have engendered them. It was hardly just to fail to give due weight to the consideration that if certain provisions of the Anti-Trust Laws—now suddenly to be enforced to the letter with retroactive rigor—had come to be lightly regarded, indeed almost forgotten, a large part, if not the larger part, of the responsibility should be laid at the door of those whose duty it was to enforce the law and who for many years, through administration after administration, Congress after Congress, had been gravely remiss in that duty and had thereby permitted these particular statutes to fall into desuetude.

Some few instances of wrongdoing had, indeed, been brought to light which were offenses against the written as well as the moral law, indefensible under any proper standard of ethics, but it was neither right nor wise to permit the just indignation which they aroused to lead to the condemnation and punishment of an entire vast industry not to mention the loss thereby inflicted upon innocent security holders and the damage caused to the country at large.

MAKING POLITICAL CAPITAL.

Given the then prevailing state of public feeling, the provisions of the Taft railroad bill afforded a peculiarly inviting opportunity to those whose political fortunes or personal prejudices or convictions led them to an attitude of hostility toward the measure or the Administration, and at the same time offered a tempting means to test the backbone—or the lack of it—and the driving power and influence with Congress of President Taft and his Cabinet. Certain Senators and Congressmen were not slow to avail themselves of that situation, and they succeeded far beyond what they could reasonably have hoped for. They laid bare in this first assault—for all men, friends and enemies, to see and be guided accordingly—that peculiar and fatal incapacity for practical political leadership and for steadfastness in resolution and action which was the besetting sin of the Taft Administration and which explains its outcome.

Having broken down the bill as introduced, its opponents not only ripped it to tatters but, to a large extent, made their own measure out of it. A number of provisions which were actuated by regard for the legitimate interests of the railroads were torn out, the coherence and logic of the measure were destroyed, amendment after amendment of radical manufacture was added by a Senate leaderless, weary, and in a hurry, some of them embodying the weird and crude notions of those to whom corporations had long been the object of fanatical animosity and whose aim was simply punitive, even vindictive. And thus the bill came back to the President. Its fate, from every consideration of political wisdom and self-respect, should have been a Presidential veto accompanied by a trenchant message, but, instead, Mr. Taft

tamely submitted, affixed his signature, and, by this truckling to and compromising with the rebellious elements in his own party bent on embarrassing and harassing him, set the pace for the vicissitudes which thenceforth beset and finally overwhelmed his Administration. He has since recognized, it seems, the faultiness of that statute, for he has repeatedly and publicly protested against the over-regulation, the starvation, and the oppression of the railroads which were the inevitable and easy-to-be-foreseen consequence of its enactment, not merely for what it contained but even more for what it omitted. For, while conferring upon the Interstate Commerce Commission almost absolute power over the interstate business of railroads, it entirely ignored the correlated problem of the exercise of control by the states. And in the states a veritable mania of railroad legislation had broken out. Drastic rate reductions, rigid rate regulation, full crew laws, and heavy additions to already disproportionate taxation combined to bring about a system of vast and inconsistent complexity of restrictions, burdens, and interferences, superimposed on the structure of federal legislation and regulation.

There is no parallel I know of in any other country to its greatest industry being placed, down to its minutest details, under the almost autocratic power of seven men owing defined accountability to no one, selected for relatively short terms and according to no particular standard of training or qualifications, and being practically free from control, restraint, or appeal. But it is not so much the existence of that power, excessive though it be, of which the railroads complain; in fact, not a few railroad men have come to be reconciled to the theory on which it rests and

even to consider the underlying principle a wise and beneficent one. Practically all, I believe, recognize that thorough public regulation has come to stay. It is the faultiness and inadequacy of the law under which the Interstate Commerce Commission works and exercises its power and the multiplicity of masters under whom the railroads have to serve and whom they have to satisfy that constitutes the main burden of their grievances and that cries for reform.

THE INTERSTATE COMMERCE COMMISSION.

That the Interstate Commerce Commission, being at the same time prosecutor, judge, and jury, combining in itself legislative, executive, and judiciary powers, is a negation of the root principle from which the American system of government springs, may be stated as an incontrovertible fact. Such combination of powers in one body has been styled by James Madison "the very definition of tyranny." The evil or impropriety of such a union of conflicting or at least inconsistent functions has been publicly acknowledged by a most unimpeachable witness, namely, one of the ablest members of the Commission itself, Hon. Charles A. Prouty, in an address delivered in 1907, from which the following extract may be quoted: "If the Interstate Commerce Commission is vested with a jurisdiction so tremendous in extent and of such finality, every effort should be made to provide a body adequate to the trust. . . . I very much doubt whether the same body can properly discharge both these functions (executive and judicial). In the end it will either become remiss in its executive duties or will, in the zeal of these, become unfit for the dispassionate performance of its judicial functions. Whatever may have been true in the past,

the time has come when the Commission should be relieved of all its duties except the hearing and deciding of complaints." If this was true in 1907, how much more true and urgent is it today, considering the immense amplification and extension which the Commission's powers and functions have received since then? And has "every effort" been made "to provide a body adequate to the trust?" I am far from underrating the great ability, vast industry, and devotion to duty of the men now composing the Interstate Commerce Commission, nor do I share in the not-infrequently-heard opinion that they are hostile to the railroads on principle, believing as I do, on the contrary, that they are earnestly striving to do justice according to their conscience and judgment and are bravely struggling with a simply intolerable burden of work and responsibility. But it cannot be gainsaid that to this Commission which has greater power and greater responsibilities concerning the industrial life of the Nation than probably any other tribunal anywhere in the world exercises there has never yet been appointed a man who came to it qualified by first rate experience in railway operation, or by broad business experience, or any considerable experience in financial matters. Nor can it tend toward providing "a body adequate to the trust" that the members of that body, called upon to deal with questions of momentous import and most intricate complexity, should be appointed for short terms and be paid salaries so modest as to make acceptance of such appointment a very great financial sacrifice to men of first rate ability, and prolonged continuance in office an injustice to their families.

THE COMMISSION'S OVERWHELMING TASK.

I doubt whether anywhere else can be found a body of seven men on whom devolves the staggering, crushing, stupendous mass of work which is laid upon the Interstate Commerce Commission. If it were composed of the wisest, most expertly trained minds and most vigorous working capacities to be found in this or any other country, it would be impossible for it to accomplish the superhuman task which Congress, in its eagerness to rid itself of troublesome problems, has piled and keeps piling upon it. According to its annual report for the year ending October 31st, 1915, the Commission during that year conducted 1,543 hearings, in the course of which it took the almost incredible total of 200,438 pages of testimony, and it must be borne in mind that this is only the preliminary work, the groundwork on which its deliberations and decisions are based. Within that period of twelve months the Commission furthermore heard oral arguments in 198 cases (sitting 103 days for that purpose), decided 902 cases upon its "formal docket," entered upon its "informal docket" 6,500 separate complaints and upon its "special docket" 6,690 applications, made 822 orders under the "long-and-short-haul-clause," etc., and had filed with it no less than 149,449 rate schedules. The Committee's report states that

A mere recital of these figures scarcely gives an adequate idea of the volume of work disposed of and the enormous interests involved in the cases that come before the Commission.

In addition to the activities above summarized, it undertook numerous prosecutions besides transmitting many cases to the several United States district attorneys, gathered statistics, collected information,

made investigations, answered Congressional inquiries and conducted a correspondence of overwhelming dimensions.

It is a physical impossibility for each of seven men to read carefully 200,438 pages of testimony in a year, even if they had nothing else to do. Yet the Commission not only has to decide cases in which 200,438 pages of testimony have been taken, but it has to hear as many arguments as are heard by the Supreme Court, grant or refuse almost countless exemptions from general rules established by Congress, initiate and supervise criminal prosecutions, conduct a great detective bureau for the purpose of discovering infractions of the statute, formulate a complex system of accounts and adapt it to changing conditions or changing conceptions of public policy, supervise the accounting of more than two thousand corporations, inspect the physical apparatus employed in railway transportation and devise means for its improvement, enforce regulations concerning hours of labor, determine what water facilities railway corporations may operate and perform numberless other duties of arduous character and vast importance. It has further to regulate telegraphs, telephones, pipe lines and express companies and to grapple with the formidable task of making a physical valuation of the railroads. For years, Congress has thrust upon the Commission one function after another until it is simply overwhelmed. The result is not merely delay and insufficient time for deliberate consideration but the necessity to relegate the hearing and investigation of many important cases to clerks or agents; and, with every desire on the part of the Commissioners for the conscientious discharge of their duties, the views and conclusions arrived at by such sub-

ordinates must necessarily have a large, if not a controlling, influence on the decisions of the Commission.

It is a regrettable but undeniable fact that no discussion of the difficulties and unjust burdens laid upon the country's greatest industry would be complete without making mention of the action of the Postmaster General in compelling the railroad to accept grossly inadequate compensation for carrying the mail and the parcel post. If any large corporation were to take advantage of its position and power as the Government does in this instance, it would not take the Federal Trade Commission long to denounce such practices and to compel redress for the aggrieved party.

THE PREDICAMENT OF THE RAILROADS.

If this presentment exhausted the grievances of our railroad industry it would be serious enough, but it is very far from exhausting them. Indeed, the most serious grievance is the fact that in addition to the activities of State legislatures there are not less than 43 state commissions, exercising varying degrees of power over railroads, guided in their decisions by no precedents or fixed rules, their jurisdiction and their decrees interwinning, conflicting with, upsetting those of each other and of the Interstate Commerce Commission. In 22 of these 43 states the commissioners are chosen by popular vote, their terms ranging from 2 to 6 years, their salaries being generally very moderate, down to as low as \$1,500 per annum. It is not surprising that the authority of such State commissions, of which it would be too much to expect or even to ask unyielding imperviousness to public pressure, should have been exercised,

in not a few instances, frankly for the selfish interest of each State, somewhat on the lines of creating through the fixing of State railroad rates and otherwise the equivalent of a protecting tariff or of an export bounty for the benefit of the industries or the consumers of each particular State. Nor will it be wondered at that there have been instances of a tendency to use the commissions' authority over the issue of stocks and bonds toward forcing the railroads to spend part of the proceeds for purposes which to the commissioners appeared advantageous for their particular State or certain localities therein. The following illustration is taken from the annual report of the Southern Pacific Company:

To provide funds for corporate purposes, arrangements were made with bankers, in May, 1913, for sale of two-year notes at a very satisfactory price. Authority of the California Railroad Commission to issue the notes was obtained without delay; approval by the Arizona Corporation Commission, however, was withheld, pending certain assurances and guaranties on the part of the Company with reference to the conduct of its business in Arizona which it was not warranted in giving, and, during the time the matter was pending before the Commission, the condition of the money market had so changed that a sale of the notes could not be made. Further consideration of a two-year note issue was abandoned, and one-year notes were issued instead, and sold at a price yielding approximately \$275,000 less than would have been received had the two-year notes been issued without delay. Under the laws of California and Arizona the issue of one-year notes did not require Commission approval.

In several cases the carrying out of suggestions made by the Interstate Commerce Commission to the railroads with the view to enabling them to obtain more adequate revenues was peremptorily stopped by State Commissions which ordered the railroad **not** to do the very things which the Interstate Commerce Commission had told them they should do and had criticised them for not having done before.

In the "Eastern rate case" the Interstate Commerce Commission found that the carriers' revenue was inadequate and insufficient, but declined to grant the greater part of the increase asked for, largely on the ground that there were other ways open to the railroads to augment their income. The Commission pointed out these ways in considerable detail, but when the railroads took action in accordance with the indications or directions thus given, they were, as to the most important of them, promptly stopped by State Commissions, Court decisions and even by the Interstate Commerce Commission itself from doing the very things which the Interstate Commerce Commission had told them to do and the feasibility and propriety of which it had given as a reason for not granting the rate increases asked for.

The following extracts from a most interesting and instructive address recently delivered by Mr. Alfred P. Thom before the State Bar Association of Tennessee may appropriately be quoted in this connection as illustrating the activities of State bodies:

Three States have passed laws making it illegal for a carrier having repair shops in the State to send any of its equipment, which it is possible to repair there, out of the State for repairs in another State, fifteen States have attempted to secure preferred treatment of their

State traffic, either by heavy penalties for delays or by prescribing a minimum movement of freight cars, some of them requiring a minimum movement of fifty miles per day, whereas the average movement for the United States is not more than twenty-six miles per day—one of these States imposing a fine of ten dollars per hour for the forbidden delay; twenty States have hours-of-service laws, varying from ten to sixteen hours; twenty States have full-crew laws; twenty-eight States have headlight laws, with varying requirements as to the character of the lights, and fourteen States have safety-appliance acts. Sixteen States have enacted statutes, each asserting for itself the individual right to control the issue of stocks and bonds of interstate carriers.

It is manifest that, if such issue is to be regulated by the individual States, every State is at the mercy of the others. A bond, to be available in the market, must, as a rule—especially now when most bonds are necessarily junior liens—be secured upon the whole railroad line; and this crosses many States. One of the States, therefore, if it possesses the power to regulate the issue of securities of an interstate carrier, may defeat a financial plan approved by all the other States and necessary to the carrier's transportation efficiency. . . .

In other words, the greediest, the most selfish, and the most unreasonable State thus secures by its own laws a preference for its own commerce over the commerce of its sister States and over interstate commerce itself.

A MASS OF CONFLICTING LEGISLATION.

What with the regulating activities of 43 Commissions besides the Interstate Commerce Commission, the adoption by State legislatures of rate-fixing measures, extra crew bills, and all kinds of minute enact-

ments (between 1912 and 1915 more than 4,000 Federal and State bills affecting the railroads were introduced and more than 440 enacted), the enormous increase within the last seven years in Federal and State taxation, the steadily mounting cost of labor, the exactions of municipal and county authorities, etc.—it will be admitted that the cup of railroad difficulties and grievances is full. I am far from holding the railroads blameless for some of the conditions with which they are now confronted. Not a few of them were arrogant in the days of their power, many mixed in politics, some forgot that besides having a duty to their stockholders they had a duty to the public, some were guilty of grievous and inexcusable financial misdeeds. But, in their natural resentment and their legitimate resolve to guard against similar conditions in the future, the people have overshot the mark. The proof of the pudding is in the eating. Not less than 82 railroads, comprising 41,988 miles and representing \$2,264,000,000 of capitalization, are in receivers' hands, and the mileage of new railroad constructed in 1915 is less than in any year since the Civil War. The duration of receivership has become longer and longer, far longer than it used to be, owing to the difficulty of raising the necessary funds for the rehabilitation of the properties and for taking them out of receivers' hands, which difficulties are largely due to the complications and delays resulting from the jurisdiction and views of State Commissions. Thus the Wabash Pittsburgh Terminal has been in bankruptcy since May 29, 1908, the Wheeling & Lake Erie since June 8, 1908, the St. Louis & San Francisco since May 27, 1913, the Wabash from December 26, 1911, to November 1, 1915, and so forth. Railroad construction has practically stopped, the

purchases by railroads have been reduced to a minimum, so much so that, had it not been for the wind-fall of the "war orders," our steel and cognate industries would have faced an exceedingly serious situation. Railroad credit has become gravely affected. It is true that faults of management and disclosures of objectionable practices have been contributory causes in diminishing American railroad credit, but from my practical experience in dealing with investors I have no hesitation in affirming that the main reason for the multiplication of railroad bankruptcies and of the changed attitude of the public toward investing in railroad securities is to be found in the Federal and State legislation of the years from 1906 to 1912 and in what many investors considered the illiberal, narrow, and frequently antagonistic spirit toward railroads of Commissions charged with their supervision and control. The fortuitous and fortunate circumstances that, owing mainly to the direct and indirect effect of the stimulus of huge war orders and because of other unusual circumstances, railroads are doing much better at present, and that investors, after having left railroad securities more or less severely alone for years, are, for the time being, looking upon them with a friendly eye, should not make us lose sight of the underlying fact that the railroad industry is in an inherently weakened condition, that the spirit of enterprise has largely gone out of railroading that, generally speaking, expenditures for construction, equipment, improvements, etc., are confined to the absolute necessities. Nor must the present prosperity of the country blind us to the consideration that the full measure of prosperity which it is capable of attaining or, indeed, any permanent and comprehensive prog-

ress or prosperity cannot be reached as long as its most important industry, that of railroading, is bureaucratized, shackled, harassed and lamed.

Incidentally it may be mentioned that if the expenditure of time, thought and effort which the numberless and intricate requirements of the Commissions impose on the Chief Executives of our railroads, together with the expenditure of cash for lawyers and for a fair sized army of officials and clerks to handle the work incident thereto, could be computed in the aggregate as to time and money, the resulting figures would be appalling. I have known of cases where for days at a time all the higher officers of a railroad were taken away from their work, having to attend hearings instead before Commissions in various parts of the country. It is an unquestioned fact that the feeling of being hampered and harassed by incessant and minute regulations, of having to go to Commission after Commission in order to obtain the sanction of a bureaucratic regime for almost each and every step, has resulted in chilling the spirit of initiative on the part of those in charge of our railroads, has diminished their desire for and satisfaction in creative activity and has lessened the inducement for ambitious and capable young men to embrace the career of railroading.

Considered from whatever point of view, the conclusion seems to me unavoidable that American railroad legislation, whilst sound in theory, is in practice a patchwork, a makeshift, and grossly and fundamentally faulty. It has been added to, modified, tinkered with session after session in National and State legislatures; it is illogical, unscientific, confusing, vexatious, and generally intolerable. The Interstate Commerce Commission and 43 State bodies acting at once

as lawmakers, prosecutors, judges and juries hold the destinies of the railroads in their hands, with the power almost over life and death—a power not much short of autocratic, for it is subject to little, if any, executive control and, as far as the Federal Commission is concerned, to practically no effective judicial review. Unlike the courts they are bound by no precedents and rules of procedure, guided by no fixed and well understood principles or rules of decision. The Interstate Commerce Commission, overburdened with labors and duties vastly beyond the capacity of any seven men, is bound to leave much important work to subordinates. In the case of rate decisions it is compelled to resort to postponements which in effect amount to denial of justice, for the power possessed by the Commission since 1910 to suspend for ten months proposed rate increases is nothing less than the power—opposed to all equity—of inflicting heavy and irrecoverable monetary penalties before or pending trial. Experience has shown that the Commission in practically all important cases avails itself of the power of suspension for the full ten months' period, which, as a matter of fact, at times is even further prolonged, the railroads consenting to such prolongation rather than have the Commission compelled to render an opinion without, in the pressure of its other work, having had time to give sufficiently thorough and mature deliberation to the subject.

SUGGESTED REMEDIES.

Railroads, being essentially nation-wide in their functions, should, as to rates and other phases of their business directly or indirectly affecting interstate results, be placed under one National authority instead of being subject to the conflicting jurisdiction of

many different States—a jurisdiction the exercise of which is always subject to the temptation of being used unfairly for the selfish and exclusive advantage of the respective individual States. State Commissions have their proper and important functions in the supervision and regulation of street railways and of public service corporations other than interstate steam railroads, and even in the case of the latter in the exercise of certain administrative, police, or public welfare powers within well defined limits. But the fundamental law of the land, the Federal Constitution, expressly reserves to Congress the exclusive power of dealing with commerce between the States, and the exercise by State authorities of rate-making and other powers which, though technically confined to railroad activities within the States, yet actually must and do affect interstate relations, is clearly opposed to the spirit, if not to the language, of the Federal Constitution.

Until the advent of the railroad legislation of recent years, the rate-making power in interstate commerce (and, in most of the States, also for intrastate commerce) was in the hands of the railroads, subject to judicial review upon complaint. Under this system the rate structure of American railroads was built up, and it may safely be asserted that, among all the accusations, just and unjust, which have been brought against them, the charge that, generally speaking, the rates thus fixed were excessive has found no place. On the contrary, the rates resulting from that system were much the lowest prevailing anywhere in the world, notwithstanding the fact that wages paid by American railroads are fully twice as high as those obtaining in Europe. Under the bill of 1910, the interstate rate-making power was to all

intents and purposes conferred upon the Interstate Commerce Commission (subject to interference by States and State Commissions), but with characteristic unfairness or thoughtlessness the power to prescribe **minimum** rates, which manifestly ought to be the concomitant of the power to prescribe **maximum** rates, was not given to the Commission. The burden of proving according to the requirements of an undefined and uncertain standard the necessity for proposed rate increases was thrown upon the railroads. Personally, I believe that the principle of giving to the Interstate Commerce Commission power to **regulate** rates is sound, and I am convinced that it has come to stay. But I think that the now prevailing rigid and cumbersome system of what is practically **rate making** by the Commission is neither sound nor wise. I believe that the public could and would be just as fully protected and that, in fact, both the public and the railroads would be the gainers if the immensely complex, difficult, and delicate task of making rates were left in the hands of those trained for it by a life's study, experience, and practice, i. e., the railroad officials, with full power, however, in the Commission, on its own motion, to reduce or to increase rates for cause.

A HELPFUL POLICY NEEDED.

It is vital to our railroads that investors be reassured and encouraged as to the safety and attractiveness of investment in American railroad securities, particularly also in view of the world-wide competition for capital which, sooner or later after the close of the European war, is likely to set in. A more liberal and helpful policy toward railroads should be inaugurated and a greater margin of net earnings se-

cured than can be obtained under the existing rates in normal times; and in this connection it must be borne in mind that such margin must include a sum over and above what would be a reasonable dividend because the nature of the railroad business makes the accumulation of a substantial surplus a necessity for every properly managed line. A railroad can never be considered a finished product. Expenditures are continually required and not few of these outlays, such as for the elimination of grade crossings, better station buildings, etc., produce no direct revenue. A trifling fraction of a cent added to rates means a vast difference to the railroads applied to the huge total of their traffic, whilst very little felt by the shipper or producer, and hardly, if at all, by the consumer. The test for proposed rate increases should not be whether a case has been made out according to some rigid doctrinaire standard, but whether it has been made out according to reason and equity and broad considerations of business fairness and of public interest which includes the preservation of railroad credit and due regard for the vast and far reaching importance of the railroad industry. It is not too much to say that on the policy and attitude of Congress and the governmental authorities, on the encouragement or discouragement afforded by them, largely depends the answer to the question whether or not railroad development is to keep pace with the country's potentialities and opportunities. Capital cannot be commandeered. It is proverbially timid and its owners will not venture forth into a field where they must be in doubt from one year to the next as to what new exactions, burdens and restraints may be placed upon the properties in which their investment is placed. If railroad officers are to plan for

the future in a large and far-reaching way, if an adequate supply of capital is to be forthcoming for the extension and development of our railroads commensurate with the opportunities before our farmers and merchants and with the vast size and promise of our undeveloped areas, there must be not only reasonable liberality but above all reasonable stability of policy. In other words, the railroad question must be taken out of politics.

The present lopsided structure of railroad laws ought to be demolished and superseded by a new body of laws designed, not to punish the railroads, but to aid them toward the greatest development of usefulness and service to the country, conceived upon harmonious, carefully considered, scientific, and permanent lines. The reform of our banking and currency laws having been carried into effect, for which the country owes a heavy debt of gratitude to President Wilson, the reconstruction of our railroad laws ranks amongst the most pressing and vitally needed reform in the economic affairs of the country. The President's latest message, in which he calls for consideration of the situation of American railroads, affords a most welcome and promising indication, justifying the hope that he is preparing to bring to bear upon a wise solution of this problem his great powers of mind and leadership. The banking and currency legislation of 1913 affords an appropriate precedent and in many respects a parallel. The national functions and character of the railroads are largely analogous to those of the national banks. Like the national banks, so should the railroads be freed, at least in essentials, from the conflicting and multitudinous jurisdiction of the several States and placed under Federal authority. And just like the national banks, they

should not only be permitted but be compelled to cooperate, and thus mobilized for the maximum extent and efficiency of service; in other words, pooling and kindred arrangements should be sanctioned, subject to the approval of the Interstate Commerce Commission. The formula and principle of the banking and currency legislation, viz., a strong, effective and controlling Central Federal Board in Washington, relieved from detail work and from certain essentially conflicting functions (which should be conferred upon a separate body) with Regional Boards according to geographic groupings, might prove exactly suited to railroad legislation. Red tape should be cut wherever possible, bureaucratic interference limited, and, to the extent that it can safely be done without jeopardizing the due protection of the interests and rights of the public, freedom should be given to the railroads in the conduct of their business coupled with strictest individual responsibility and fullest publicity. Railroads should be freed from the unfair, unreasonable, and illogical situation of being subjected, as they now are, at one and the same time to special regulatory and supervisory legislation, and to the inhibitions of the Sherman Anti-Trust Law, which is based upon a theory and designed to serve a purpose essentially contradictory to the theory and purpose of our existing railroad legislation. Furthermore, the same body which determines earnings by fixing rates should be charged with the responsibility of hearing and determining wage disputes between railroads and their employees, or if that be not practicable then at least with the duty of giving full weight and consideration to all factors that go to enhance the cost of operating railroads, such as legislative enactments like the full crew law, increased taxation, advances in wages, and so forth.

The situation resulting from the European war has brought to this country a scope and a wealth of opportunity almost, if not entirely, without parallel in history. It has never happened before that the great nations of the earth, all but one, were engaged in a terrible physical and economic conflict—a conflict so appallingly costly and destructive in lives and treasure that its consequences must be felt for generations—whilst the one great country at peace not only enjoys its blessings in an undiminished degree, but is actually benefited by the urgent necessity of some of the fighting nations, to turn to it for certain of their essential requirements during the continuance of the war. Granting that it is true that no nation can derive lasting economic advantage, in an absolute sense, from the destruction of the wealth of other nations, yet it must be borne in mind that all values are relative, and there can be no doubt that in relation to all other nations the position, economic power and wealth of the United States have received an immense enhancement in consequence of the war, and the opportunities opened up to it are well nigh boundless. But there is no great opportunity without a corresponding duty, no privilege without a corresponding obligation to use it wisely and beneficently. To fulfil with credit and honor, with due advantage to itself and the world, the part which the favor of Providence has allotted to America is a weighty and solemn task. It calls for thoroughness of thought and study, integrity, self-restraint, and conservatism, boldness, enterprise and adaptability, breadth of vision coupled with attention to details, and last, but not least, wise and mutually trustful co-operation between business and the legislative and administrative powers—such as exists as a matter of course in most

if not all of the great nations of Europe. By all means let us have vigorous governmental action, legislative regulation, administrative control whenever and in whatever ways, after mature and dispassionate consideration, it appears best in the interest of the country. But do not let us have paternalistic regime, ignorant interference, partisan motives, political viewpoints, narrow technicalities. Let us carefully refrain from so hampering and confining the activities of business men as to lame the initiative, weaken the self-reliance, chill the enterprise and zeal and joy of work which have always been their characteristics and which have so greatly contributed toward the marvelous development of this country. Let us have no patience with the presumption that men who, mostly from small beginnings, have fought their way to the top after having passed through the hard and searching test and discipline of business, are to be ignored or distrusted in the shaping of the industrial and economic policies of the country, because of alleged incapacity or unwillingness to take a broad and patriotic view of national questions directly or indirectly affecting their own interests. Let us lend no countenance to the presumption that patriotism, virtue, and knowledge reside primarily with those who have been unsuccessful, those who have no practical experience of business, nor yet, be it said with all respect, with those who are politicians or office holders.

THE BEGINNING OF A NEW ERA.

I know of no finer or more honorable body of men than the presidents of our American railroads. There is not one of them now in office who owes his position to inherited advantages, to protection, to anything, in fact, but his own qualities of mind and character.

With few exceptions, the men in active charge of large businesses or corporations in this country have made their own positions; the vast majority started at or near the bottom of the ladder. There is no center in the world where the label counts less, where it is less possible to bequeath position, however backed by wealth, where the shine and effect of a great name is more quickly rubbed off if the bearer does not prove his worth, where the acid test of personal efficiency is more strictly applied, where merit is more certain to come to the top, than in the great mart of American business. And there is no country where the capacities of representatives of business are so little availed of in governmental and political affairs, their views so little heeded and so frequently rebuffed, where legislation affecting economic, industrial and financial matters is framed, and the resulting laws administered with such disregard of the counsel and expert knowledge of business men as in the United States. A number of instances could be cited of law-making (the latest being the Clayton Anti-Trust Act) where, if the advice of such men had been taken, the aims sought to be accomplished could have been attained with equal or greater sureness of effect and without undesirable incidental results such as were not intended by the legislators, though clearly foreseen by the trained experience of business men.

Fortunately, there have been indications within the recent past which justify the hope that this condition of affairs is about to change and that prejudices and antagonisms which have been prevalent all too long are beginning to give way to more auspicious relations. As corporations have learned the lesson that their well-being depends upon their so conducting themselves as to deserve the good-will and sup-

port of public opinion, so the people have learned that their own prosperity and the prosperity of the basic industries of the country are interdependent. The matter and manner of the passage of the Federal Reserve Act, the spirit and method of its administration, the co-operation between the Treasury and the banking community during the first few months of the European war, by means of which what threatened to become a most serious situation was met and successfully overcome, several public declarations of President Wilson, the activities of the Administration in co-operation with business men, aimed at enlarging our commercial and financial intercourse with South and Central America and other countries—all these and other instances that might be mentioned are evidences of a new spirit expressing itself on broad and constructive lines. Our railroad legislation, on the other hand, and, in frequent instances, its administration, remains a glaring example of the opposite spirit, and our railroad industry cannot permanently prosper, nor can it render the full measure of service which the vast development ahead of the country calls for until relief is given to the railroads from the legislative and administrative conditions which now hamper, restrain and oppress them.

Some fifty years ago, that great statesman and seer and noble man, Abraham Lincoln, addressed the following words to Congress: "You cannot, if you would, be blind to the signs of the times. I beg of you a calm and enlarged consideration of them, ranging, if it may be, far above personal and partisan politics. . . . So much good has not been done, by one effort, in all past time, as in the Providences of God it is now your high privilege to do. May the vast future not have to lament that you have neglected it."

Of course, I do not mean to put in comparison the vital and fateful problem which President Lincoln and the men of his time were called upon to face, with the economic and social task, important and far reaching though it is, which is laid upon the statesmanship of our day; but it may well be hoped that something akin to the spirit so eloquently invoked, to the sentiments so inspiringly expressed by Lincoln may guide all those in a position of responsibility and especially our legislators and administrators in meeting with broad, wise and dispassionate vision and action the new phase of development which is opening up before the American nation.

